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Alistair Edwin May

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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALISTAIR EDWIN MAY

Appeal 2009-008802
Application 10/620,811
Technology Center 2600

Before ALLEN R. MACDONALD, CARL W. WHITEHEAD, JR., and
BRADLEY W. BAUMEISTER *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Introduction

Appellant appeals under 35 U.S.C. § 134 of the Final Rejection of claims 1-20. *See* Appeal Brief 5. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We reverse.

Exemplary Claim

1. A radio-capable device, comprising:
 - a data collection unit for collecting data, and having a normal operating mode, in which it is enabled for collecting data, and a low-power mode;
 - a radio communication unit for transmitting over a radio channel data collected by the data collection unit; and
 - a radio channel sensor coupled to the radio communication unit for sensing at least one physical characteristic of the radio channel, and arranged to cause the data collection unit to enter the normal operating mode if the physical characteristic meets a pre-set threshold.

Rejections on Appeal

The Examiner rejected claims 1-3, 6, 13, 15-17 and 20 as being unpatentable under 35 U.S.C. § 102(e) as being unpatentable over US 2002/0126094 A1 to Junod (“Junod”).

The Examiner rejected dependent claims 4, 5 and 14 as being unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Junod.

The Examiner rejected dependent claims 7-12, 18 and 19 as being unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Junod and US 2002/0021278 A1 to Hinckley (“Hinckley”).

Appellants' Contention

Appellant contends that “The capacitance or inductance of an antenna is not a physical characteristic of a radio channel, as required by the claims.” (Appeal Brief 5).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Office personnel must rely on Appellants' disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348 (Fed. Cir. 2002)(emphasis in original) (citations and quotations omitted).

Issue on Appeal

Did the Examiner err in rejecting claims 1-20 as being unpatentable because the reference fails to disclose a physical characteristic of a radio channel?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments (Appeal Brief and Reply Brief) that the Examiner has erred. The Examiner's position is that Junod discloses that during the sleep mode, the hand detection circuit detects the capacitance of the antenna and since the same antenna is used for transmitting RF signals from the RF circuit and detection, the antenna is a "radio channel" in a physical sense, and therefore the capacitance detected is the "physical characteristic." Answer 18. The Examiner also contends that the claims do not require the detection of RF signals and there are no limitations within the claims that prevent the Examiner from interpreting the claim language in this manner. *Id.*

Appellant's Specification discloses, "The physical characteristic is suitably the tendency of the channel to return to the radio communication unit radio signals transmitted by the radio communication unit." Specification 3.

Appellant argues that:

Junod discloses that a switch 130 switches a capacitor 132 and RF circuit 128 into contact with the antenna electrodes during antenna mode, and switches hand detect circuit 126 into contact with the antenna electrodes during a sleep mode. In such configuration, the antenna when used to sense the presence of a user's hand cannot be used to detect any characteristic of a radio channel, as the RF circuit would be disconnected from the antenna in this mode. Appeal Brief 5-6.

We find the Appellant's arguments to be persuasive. We disagree with the Examiner's reasoning that a physical characteristic of a radio channel is sensed by measuring the capacitance of Junod's antenna. Each of the

independent claims has a derivation of the claim limitation that requires “a radio channel sensor coupled to the radio communication unit for sensing at least one physical characteristic of the radio channel.” Therefore we will not sustain the Examiner’s anticipation rejection of claims 1-3, 6, 13, 15-17 and 20. Accordingly, we will not sustain the Examiner obvious rejections of dependent claims 4, 5, 7-12, 14, 18 and 19.

CONCLUSION

The Examiner has erred in rejecting claims 1-20 as being unpatentable.

DECISION

The Examiner’s rejection of claims 1-20 is reversed.

REVERSED

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